UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION 20

SAN FRANCISCO CONSERVATION CORPS [1]

Employer/Petitioner

and Case 20-RM-2847

SERVICE EMPLOYEES INTERNATIONAL UNION,
LOCAL 790, AFL-CIO

Union

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, I find:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

1 The name of the Employer/Petitioner is in accord with the stipulation of the parties.

2. The parties stipulated, and I find, that the Employer is a California nonprofit corporation with a place of business in San Francisco, California, where it provides social services. During the twelve-month period preceding the hearing, the Employer derived gross revenues valued in excess of $250,000 and purchased and received goods and/or services valued in excess of $5,000 which originated from points located outside the State of California. Based on the parties' stipulation to such facts, I conclude that the Employer is engaged in commerce within the meaning of the Act.

The Union contends that the petition should be dismissed because the Employer is a "political subdivision" of a governmental entity exempt from the Board's jurisdiction under Section 2(2) of the Act. The Employer takes the opposite view. For the reasons discussed below, I find that the Employer is an employer within the meaning of Section 2(2) of the Act.

Background: The Employer's Formation, Functions, Funding, Governance and Administration. The Employer was founded in 1983 by then San Francisco Mayor Diane Feinstein, Judge J. Anthony Kline, the presiding justice of the Court of Appeals, 1st Appellant District of California, and a group of private individuals under the California non-profit corporation law. There is no evidence to establish that the Employer was created by any state or federal law or municipal enactment or by the act or mandate of any public official.

The Employer is a California nonprofit public benefit corporation, organized for public purposes under the California Nonprofit Public Benefit Corporation Law.[2] The primary purposes for which the Employer was formed are: "charitable and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1954, as amended." Those specific purposes include: (1) to

organize and operate a youth employment, work training, classroom education, and career development program for young people of both sexes who reside in the City and County of San Francisco; (2) to work with local, state, and federal public agencies, including special districts, which own or manage land within San Francisco County or land outside San Francisco which is dedicated in whole or in part to San Francisco or its residents; and in cooperation with such agencies and with other public and private organizations, where appropriate, to identify, organize, administer and oversee work projects for the conservation, rehabilitation or improvement of such lands; (3) to work on private lands or other public lands where a public purpose or emergency condition exists; (4) to work with local, state, and federal disaster preparedness and emergency response programs; (5) to provide auxiliary assistance to existing public and private emergency response and disaster relief agencies; and (6) to assist in the accomplishment of the purposes of the American Conservation Corps Act of 1983.

The Employer operates out of four locations in San Francisco: Fort Mason where its administrative headquarters are located; the Environmental Outreach Center (ECO Center) located in the Mission District, which houses the Youth in Action (YIA) program and three AmeriCorp programs; the Community Service and Training (CST) Center located in the Presidio, which houses programs for adult corpsmembers; and the Presidio Recycling Center, a satellite of the ECO Center, also located in the Presidio, which houses the Recycling Outreach Team.

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2 In this regard, the record also contains a contract between the Employer and the City and County of San Francisco, in which the Employer is described as a "private nonprofit corporate entity."

The Governance of the Employer. The Employer is governed by its Board of Directors.[3] The Employer's bylaws state that the Employer's Board shall consist of not less than nine nor more than fifteen individuals. The precise number of directors within that range is left to the sole discretion of the Board. Section 3 of the by-laws provides that: "The initial Board shall consist of twelve directors, all of whom shall be designated by the Mayor of San Francisco." Of the initial directors, three were required to be general managers of San Francisco city governmental entities, including the San Francisco Recreation and Parks Department, the San Francisco Public Utilities Commission and the San Francisco Unified School District.[4] Pursuant to Section 4 of the by-laws, at all times thereafter, three members of the Employer's directors are required to be occupants of those positions.[5] Section 6 of the by-laws provides that any vacancy on the Board, whether caused by the expiration of a term, removal from office or resignation, is to be filled by direct appointment by the Mayor of San Francisco from a list of no fewer than three persons submitted for each vacancy, who

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3 Section 5 of the Employer's by-laws states: "Subject to the limitations imposed by law or contained in the Articles of Incorporation or these by-laws, the activities and affairs of the corporation shall be conducted, and all corporate powers shall be exercised, by or under the ultimate direction of, the Board of Directors."

4 At the time of the hearing, in addition to the heads of the three San Francisco governmental entities, described above, the following individuals were on the Employer's Board of Directors: J. Anthony Kline, presiding judge of the California Court of Appeals as the chairman; Mark Buell, a private citizen; Andrew Dailey, a private citizen who works for a banking firm; Donna Casey, a private citizen who works at various non-profit organizations; Virginia Gee, a private citizen who works as a consultant; Valerie Kazanjian, a private citizen who works for Bechtel Corporation; Bill McGlashan, a private citizen who works for a corporation called Critical Path; Bill Wong, a private citizen who is a representative of the Carpenters Union; Larry Ruff, a private citizen who works for Levi Strauss & Co.; Hadley Roff, a private citizen; Mark Pastore, a private citizen and restaurateur; and Leamon Abrams, formerly a private citizen employed by the Bechtel Corporation, but who had recently started working as the Director of Economic Development for the City and County of San Francisco.

5 The record reflects that at the time of the hearing, the Employer's Board of Directors consisted of fifteen board members, twelve of whom were private citizens, three of whom were governmental officials as required under the by-laws and one of whom (Leamon Abrams) was a city governmental official that was not required under the by-laws.

have been "nominated by a majority of the directors then in office."[6] Under Section 7(a) of the by-laws, the Board of Directors may declare a vacancy and remove an individual for cause without the Mayor's approval. However, any replacement is subject to the appointment procedures of Section 6, described above. Further, under Section 7 of the by-laws, an individual director may be removed "without cause" only if that action is approved by a majority of the directors then in office and if the Mayor of San Francisco "has expressly consented in writing to such removal."

Section 30 of the by-laws provides that no amendment to Sections 4 or 6 shall be valid without the written consent of the Mayor of San Francisco. Section 30 further provides that "[a]ny amendment, adoption, or repeal of a by-law attempted in violation of this Section 30 shall be null and void."

An Amendment to Section 6 of the by-laws, contained in the record, modifies, in relevant part, the original vacancy appointment process to permit the chairman of the Board of Directors to "request" that the mayor exercise his or her power of appointment to ensure "racial, ethnic and sexual balance," and to ensure that the Board include certain representatives of various segments of the community. However it expressly reserves to the Mayor the ultimate authority of appointment.

The Employer's Executive Director, Ann Cochrane, testified that the Mayor of San Francisco does not attend Board meetings and that she was aware of no occasion when the Board

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6 The process for choosing a Board member is initiated by the nomination of candidates by the existing Board and the selection of a particular candidate by a simple majority vote. The candidate's name is then forwarded to the Mayor's office for approval. The record reflects that although the by-laws require that a list of no less than three candidates be sent to the Mayor, the actual practice has been to forward only one candidate's name to the Mayor. The Mayor has approved all candidates nominated by the Board.

sought the Mayor's input regarding nominations to the Board of Directors.[7] She further testified that she was unaware of any occasion when the Mayor has disapproved a nomination to the Board of Directors. According to Cochrane, the Employer was not established by the State of California or the City and County of San Francisco and it is not a department or agency of the City and County of San Francisco.

As indicated above, the Employer's bylaws require that three of the members of the Employer's board be general managers of agencies of the City and County of San Francisco. However, the record contains no evidence that any statute or any other public authority imposes this requirement. Rather, this requirement is imposed solely by the Employer's bylaws. Nor does the record establish that the Mayor's approval of members nominated for positions on the Board is mandated by law or by any public authority.

The Employer's Programs. The record includes the Employer's "Annual Report 2001," which states:

> SFCC is a non-profit job and academic training organization serving young people ages 11-26. The SFCC offers young people opportunities to develop themselves, their academic abilities and marketable job skills while addressing community needs through service work. The SFCC was established in 1983, as one of the first urban youth corps in the nation. Since then, the SFCC has engaged over 2,000 participants in more than three million hours of community service.

As indicated above, the Employer operates a multi-site, multi-program operation. On an annual basis, more than 400 youth and adults, participate in Employer programs, which include

[7] Cochrane had been the Employer's Executive Director for approximately 15 years.

environmental peer education, advocacy and activism, as well as solid waste management and recycling. At the time of the hearing, approximately 250 young people were participating in the Employer's programs. Approximately 80 of these young people are adult corpsmembers, between 18 and 26 years of age. The adult corpsmembers, along with volunteers, engage in a variety of service projects.[8]

In addition to the services involving adult corpsmembers, the Employer provides services to approximately 100 middle and high school students between the ages of 11 and 17 who participate in the Youth in Action (YIA) program, an after-school, weekend and summer program at the Employer's ECO Center in the Mission District of San Francisco. The YIA program emphasizes academic enrichment, leadership development, community service projects and environmental education. The students in the YIA program are referred to by the Employer as "junior corpsmembers." As set forth below, the parties stipulated, and I find, that the junior corpsmembers engaged in the YIA program are not employees of the Employer and should be excluded from the unit.

The parties also stipulated, and I find, that the AmeriCorp members who participate in the Employer's programs are not employed by the Employer and should be excluded from the unit.[9]

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8 During 2001-2002, these service projects included weeding public areas; performing landscaping work; performing restoration work in the Presidio; recycling; teaching recycling education to students; and the installation of play structures and bike racks in San Francisco.

9 About 27 AmeriCorp members volunteer in the Employer's programs, including the ECO-Center, Youth in Action, Environmental Internship, and Recycling Outreach program. AmeriCorp members are generally between the ages of 17 and 26 years of age. The AmeriCorp program limits their service to a maximum of 1700 hours a term and they may work no more than two terms. The Employer provides the AmeriCorp members with a monthly stipend but does not pay them wages. Under the National and Community Service Act of 1990 (42 USC Section 12511(17)(B)), AmeriCorp members are not considered employees of the programs in which they participate. The parties stipulated, and the record supports the conclusion, that the AmeriCorp members should be excluded from the unit because they are not employees of the Employer.

Funding Sources. The Employer's funding comes primarily from public sources, including contracts and grants from the City and County of San Francisco, the State of California and the Federal Government. Federal sources of funds include the Presidio Trust, a federal entity, and AmeriCorp. The Employer also receives grants and donations from corporations, foundations and individual private donors.

In fiscal year 2001-2002, about one-third of the Employer's funding came from the City and County of San Francisco, including from the Mayor's Office of Community Development, the San Francisco Housing Authority and the San Francisco International Airport. This included a $1.1 to $1.2 million-dollar grant from the Mayor's Office of Community Development to perform projects for low-income constituents, primarily involving the installation of play structures and park restoration-type work and approximately $100,000 from the San Francisco Housing Authority for the installation of play structures at Housing Authority sites. The Employer also received approximately $100,000 from the San Francisco Airport (SFO), through contracts for cold, fire and fuel reduction. A grant from the San Francisco Department of Children, Youth and Families for approximately $75,000 supported the Employer's middle and high school program.[10]

The record contains no evidence that the Employer is subject to state or local "sunshine laws;" that its internal documents are considered public records; or that it is subject to general audit by

[10] Some of the other public sources of funding for the Employer include: the California Department of Conservation; the National Park Service and the Presidio Trust; the San Francisco Recreation and Park Department; the San Francisco Water Department; the San Francisco Department of Parking and Traffic; the Mayor's Neighborhood Beautification Fund; and the San Francisco Fire Department.

any governmental entity. [11] Nor is there any evidence that the Employer has the authority to condemn or exert eminent domain over property; to issue taxes or bonds; or to subpoena documents or witnesses.

Day-to-Day Operations. The record does not establish that the Employer's day-to-day operations are controlled by any governmental entity or public officials. The daily operations of the Employer are implemented by its managers and supervisors. The Employer's management has the exclusive authority to hire and fire employees. The Employer's executive director has absolute authority to enter into contracts on behalf of the Employer; to prepare the Employer's annual budget; to set employment terms and conditions for all employees of the Employer; and generally to set the Employer's labor and operating policies. There is no evidence that the City of San Francisco or any other governmental entity must approve the Employer's budget or its labor or other operational policies. As indicated above, the Mayor has never sat in on a Board of Directors meeting and has never rejected a nominee for membership on the Employer's Board.

Analysis. As noted above, the Union contends that the Employer is an exempt entity under Section 2(2) of the Act, relying on the Supreme Court's decision in *Natural Gas Utility District of Hawkins County,* 402 U.S. 600, 604-605 (1971). The Employer takes the opposite view.

Section 2(2) of the Act states in relevant part:

> The term "employer" includes any person acting as an agent of an employer, directly or indirectly, but shall not include the United States or any wholly owned Government corporation, or any Federal Reserve Bank, or any State or political subdivision thereof, or any person subject to the Railway Labor

[11] The City of San Francisco does conduct a limited audit with regard to funding involving specific projects between the City and the Employer.

> Act [45 U.S.C. Sec. 151 et seq.). as amended from time to time, or any labor organization . . . ."

In *Hawkins County*, 402 U.S. at 604-605, the Supreme Court set forth a two-part test of what constitutes a political subdivision under the Act. Political subdivisions are defined as:

> Entities that are either (1) created directly by the state, so as to constitute departments or administrative arms of the government, or (2) administered by individuals who are responsible to public officials or to the general electorate.

The analysis in *Hawkins* is in the disjunctive. Thus, an entity is a political subdivision if it meets either prong of this test.

With regard to the first prong of the *Hawkins* test, as discussed above, the record reflects that the Employer was established by San Francisco Mayor Diane Feinstein, Judge J. Anthony Kline and a group of private individuals under the California non-profit corporation law. The plain language of Section 2(2) "exempts only government entities or wholly owned government corporations from its coverage—and not private entities acting as contractors for the government." *Aramark Corp. v. NLRB*, 179 F.3d 872, 878 (10th Cir. 1999), citing *Teledyne Economic Development v. NLRB*, 108 F.3d 56, 59 (4th Cir. 1997). The creation of the Employer as a private corporation, without any state legislation or other state enabling action, clearly leaves the Employer outside the ambit of the Section 2(2) exemption. The record contains no evidence that the Employer was intended to operate as a department or administrative arm of the City of San Francisco or of any other governmental entity. Accordingly, as the formation of the Employer is attributable to private rather than governmental action, I find that it is not a political subdivision under the first prong of the *Hawkins* test. See *Research Foundation of the City University of New York*, 337 NLRB No. 152 (July 31, 2002); *Truman*

Medical Center, Inc. v. NLRB, 641 F.2d 570 (8th Cir. 1981); *Jefferson County Community Center for Developmental Disabilities v. NLRB*, 737 F.2d 122 (10th Cir. 1984), cert. denied, 469 U.S. 1086 (1984).

The Union contends that the Employer is a political subdivision under the second prong of the *Hawkins* test, because it is "administered by individuals who are responsible to public officials or to the general electorate." In support of this contention, the Union argues that: (1) the Employer is organized under the California non-profit public benefit corporation law for public purposes; (2) a substantial amount of the Employer's operating revenue is derived from public, not private, sources; and (3) the entirety of the Employer's Board of Directors is subject to the expressed and reserved appointment authority of the Mayor of San Francisco, an elected public official.

With regard to the first argument raised by the Union, it is well-established that a corporation is not deemed to be a political subdivision merely because it is a non-profit corporation established under state law and a public benefit corporation with tax exempt status pursuant to 26 U.S.C. Section 501(c)(3). The Board routinely exercises jurisdiction over entities, which, like the Employer, are exempt from federal taxes pursuant to 26 U.S.C. Section 501(c)(3). *See e.g.*, *Five* Cap, *Inc.*, 331 NLRB 1165, 1168 (2000) enfd. 294 F.2d 768 (6th Cir. 2002); *Enrichment Services Program, Inc.*, 325 NLRB 818 (1998); *Concordia Electric Cooperati*ve, 315 NLRB 752, 755-756 (1994).

As to the second contention raised by the Union, the mere fact that an employer's operating revenue is derived primarily from public instead of private sources is not sufficient to establish that it is an exempt political entity. *Ibid.*

With regard to the third issue raised by the Union, in order to determine whether an entity is "administered by" individuals responsible to public officials or the general electorate, the Board considers whether those individuals are appointed by, and subject to, removal by public officials. See *Hawkins* County, 402 U.S. at 605; *Oklahoma Zoological Trust*, 325 NLRB 171 (1997). If a majority of an employer's board of directors is composed of individuals responsible to public officials or to the general electorate, the employer may be an exempt political subdivision. *Economic Security Corp*., 299 NLRB 562, 565 (1990); *Woodbury County Community Action Agency*, 299 NLRB 554, 555 (1990). However, a question critical to this analysis is whether the composition of the board is determined by law or solely by an employer's governing documents. If the latter situation is the case, an employer will not be deemed an exempt political subdivision. *Research Foundation of the City University of New York*; *Southwest Texas Public Broadcasting Council*, 227 NLRB 1560, 1562 (1977); *Kentucky River Community Care, Inc. v. NLRB,* 193 F.3d 444, 450-452 (6th Cir. 1999); *Crestline Memorial Hospital Assn. v. NLRB,* 668 F. 2d 243, 245 (6th Cir. 1982).

In this case, the Employer's own governing documents, its by-laws, determine the composition of its Board of Directors. The bylaws define how individuals are appointed to and removed from the board. The appointment and removal of Board members is not governed by any statutory provision. Nor does the record contain evidence that any statute mandates the Mayor's involvement in the selection or approval of Board members. Rather, this requirement is imposed solely by the Employer's by-laws. Similarly, the record contains no evidence that any statute requires that three of the Employer's nine to fifteen Board members be general managers of San Francisco City entities. This requirement is also imposed solely by the Employer's by-laws. Although the by-laws give

the Mayor the authority to approve or disapprove individuals nominated for Board membership and require that three of the Board members be San Francisco City officials, I do not find that these requirements are sufficient to make the Employer an exempt political subdivision because they are not imposed by any statutory or other legal mandate, but solely by the Employer's own governing documents. In this regard, I also note that the Mayor has never disapproved a nominee submitted for a Board of Directors position. In these circumstances, I find that the Employer's Board of Directors is not responsible to any public official or the general electorate.

The record reflects that the managers and supervisors who implement the Employer's daily operations are responsible to the Employer's Board of Directors. These managers and supervisors administer all of the Employer's daily operations, formulate its operating and labor relations policies as well as the policies relating to its budget and daily financial operations. The record contains no evidence that the Employer's managers and supervisors are responsible to any governmental entity or public official. Nor does the record establish that the Employer is otherwise subject to governmental control with regard to its daily operations, formulation of labor and other operating policies or with regard to its budget. As indicated above, the Employer is not subject to any "sunshine laws," requiring that its internal documents be considered public records. Nor is it subject to any general audit by any governmental entity. In these circumstances, I find that the Employer is not administered by individuals who are responsible to public officials or the general electorate.

In view of the foregoing, I find that the Employer is not an exempt "political subdivision" of a governmental entity under Section 2(2) of the Act. Accordingly, I find that the Employer is engaged in commerce and that it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The parties stipulated, and I find, that the Union is a labor organization within the meaning of the Act.

4. The parties stipulated, and I find, that there is no contract bar to this proceeding.

5. As modified by the parties' stipulations at the hearing, which are set forth below, the Employer seeks an election to determine whether the Union should be deemed the exclusive collective bargaining representative of the following unit:

> All full-time and regular part-time employees employed by the San Francisco Conservation Corps at its facilities in San Francisco, California, in the following classifications: YIA program manager (conservation and recreation), YIA program manager (media projects), program manager (environmental) intern, recycling operations supervisor, recycling outreach supervisor, ISHIO operations site coordinator, member development coordinator, orientation coordinator, career development counselor, development associate (private), development associate (public), development associate (marketing and public relations), administrative assistant, skilled program assistant, CST administrative assistant, education program assistant, training and development assistant, network administrator, part-time registrar, billing/contracts manager and support service program manager; *and excluding*, all other employees, AmeriCorp members, adult corpsmembers, junior corpsmembers, Crew 41 junior corpsmembers, executive director, deputy director, executive assistant, ECO Center director, program director, director of finance, director of development, associate director of personnel, associate director of programs, associate director of finance, associate director of operations, associate director of environmental programs, associate directors of outreach and recruitment, associate director of youth programs, associate director of training and development, associate director of education, training and development, project coordinator, program manager (recycling services), YIA program manager (leadership projects), CST program managers, CST field education supervisors, personnel assistant, administrative assistant, CST director assistant, YIA program manager (leadership projects), accounts payable/payroll manager, all office clerical employees, confidential employees, guards and supervisors as defined in the Act.

Stipulated Unit Inclusions. The parties stipulated, and I find, that the individuals in the following job classifications should be included in the unit: YIA Program Manager (Conservation and Recreation) Justin Stoddard; YIA Program Manager (Media Projects) Jen Bowman; Program Manager

(Environmental) Intern Sean Higgins; Recycling Operations Supervisor Corey Neary; Recycling Outreach Supervisor Alain Claudel; ISHIO Operations Site Coordinator Tim Morgan; Member Development Coordinator Laura Viggiano; Orientation Coordinator James Byars; Career Development Counselor Mark Gambala; Development Associate (Private) Michael Wetzel; Development Associate (Public) Cian Dawson; Development Associate (Marketing and Public Relations) Amy Hendrix; Administrative Assistant Jackie Walker; Skilled Program Assistant Evan Goldman; CST Administrative Assistant Yvette Linares; Education Program Assistant Leila Azari; Training and Development Assistant Regina Schuman; Network Administrator Derek McDonald; part-time Registrar Brandi DeGarmeaux; Billing/Contracts Manager Eva Truong; and Support Service Program Manager Kristi Makarawicz.[12]

Stipulated Unit Exclusions: The parties stipulated, and I find, that the individuals in the following job classifications should be excluded from the unit as supervisors within the meaning of the Act and/or managerial employees: Executive Director (Ann Cochrane); Deputy Director (Tanya Lampkin); Executive Assistant Cari Weishaar; ECO Center Director (Jennifer Blenkle); Program Director Janet Gomes; Director of Finance Charles Quaid; Director of Development Lise Hewitt; Associate Director of Personnel Heather Bratt; Associate Director of Programs Peter Chandonnet; Associate Director of Finance Jennifer Tsoi; Associate Director of Operations Rob Rinzler; Associate Director of Environmental Programs Esa King; Associate Director of Outreach and Recruitment

12 The parties stipulated, and I find, that Support Service Program Manager Kristi Makarawicz is a professional employee who should be accorded a *Sonotone* election, as directed below. In this regard, the record reflects that Makarawicz is a licensed clinical social worker (LCSW) who is responsible for developing and implementing a support/case management service program for adult corpsmembers. The job description for her position requires that she have either a MSW or a "lay degree;" have one to two years experience supervising social service staff; and have experience providing case management and counseling and handling crisis intervention and group dynamics.

Michelle Mateo; Associate Director of Outreach and Recruitment Kimberlie Warren; Associate Director of Training and Development Dionne Knox; Associate Director of Education, Training and Development Susan Schatzman;[13] Associate Director of Youth Programs Michael Jones; and Accounts Payable/Payroll Manager Kristy Epps.

The parties also stipulated, and I find, that AmeriCorp members should be excluded from the unit on the basis that they are not employees of the Employer.[14] The parties further stipulated, and I find, that except for the Crew 41 members discussed below, all junior corpsmembers should be excluded from the unit because they are not employees of the Employer.

With regard to the Crew 41 members, while the parties agree that individuals in this classification should be excluded from the unit, they disagree as to the basis for exclusion. The basis for the exclusion is relevant because it affects the determination of whether YIA Program Manager Sasha Dobos-Czarnocha is a statutory supervisor. The Employer asserts that Crew 41 members should be excluded because they do not share a community of interest with employees in the petitioned-for unit and the Union asserts they should be excluded because they are not statutory employees. As discussed below, I find that the Crew 41 members are employees within the meaning of the Act, but I am excluding them from the unit based on the parties' stipulation to exclude them.

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[13] The Employer represented that two positions, the associate director of education and the associate director of training and development, had recently been combined and that Susan Schatzman had been hired to fill this position.

[14] In this regard, the National and Community Service Technical Amendments Act of 1991, Pub.L. No. 102-10 § 3(4), 105 Stat. 29 (codified as amended at 42 U.S.C. § 12511(17)(B)) provides that an AmeriCorp participant "shall not be considered to be an employee of the program in which the participant is enrolled."

Similarly, with regard to the adult corpsmembers, while the parties agree that individuals in this classification should be excluded from the unit, they disagree as to the basis for exclusion. Thus, the Employer asserts that adult corpsmembers should be excluded from the unit on the basis that they do not share a community of interest with employees stipulated to be included in the unit and the Union argues that the adult corpsmembers must be excluded because they are not statutory employees. At the hearing on remand, however, the Union expressed its willingness to proceed to an election should it be determined that adult corpsmembers should be included in the unit. The issue of whether the adult corpsmembers are employees under the Act is relevant both as to whether they should be included in the unit and the issue of whether Project Coordinator Eugenia Sarretea, Program Manager (Recycling Services) Valerie Carey and CST Program Managers Carter Church, Maurice Saulsbury and Matthew Tago and CST field education supervisors Therman McGowan, Richard Carter, Richard Daigle and Cari Mitchell are statutory supervisors based on their supervision of adult corpsmembers. For the reasons discussed below, I find that the adult corpsmembers are employees within the meaning of the Act but do not share a sufficient community of interest with the unit employees to warrant their inclusion in the unit.

As discussed below, the issue of whether Crew 41 members and adult corpsmembers are statutory employees is critical to the determination of the supervisory/managerial status of certain individuals who oversee employees in these programs.

The Issues. The Employer asserts that YIA Program Manager (Leadership Projects) Sasha Dobos-Czarnocha, who oversees the Crew 41 members, should be excluded from the unit on the basis that she is a statutory supervisor. The Union takes the opposite view.

The Employer also contends that Project Coordinator Eugenia Sarretea, who oversees adult corpsmembers, should be excluded from the unit on the basis that she is a statutory supervisory and/or a managerial employee. The Union takes the contrary view. The Employer further contends that Recycling Services Program Manager (Recycling Services) Valerie Carey, who oversees adult corpsmembers; CST Field Education Supervisors Therman McGowan, Richard Carter, Richard Daigle, Lawrence Hamilton and Cari Mitchell, who oversee adult corpsmembers; and CST Program Managers Carter Church, Maurice Saulsbury and Matthew Tago, who oversee the CST field education supervisors, are statutory supervisors and should be excluded from the unit. The Union takes the contrary view.

The Employer further contends that Personnel Assistant Robin Graybill, CST Director Assistant Natasha Shterngerts, and Administrative Assistant Delia Barnes should be excluded from the unit on the basis that they are confidential employees. The Union takes the opposite position.

Finally, the Employer asserts that part-time teachers Erin Foley and Ann Arns should be excluded from the unit because they are employed by the Muir Charter School and not by the Employer; and that part-time teachers Rene, Sonia and Paul (last names not disclosed in the record) should be excluded from the unit because they will soon be transferred from the Employer's payroll to that of the Muir Charter School. The Union has taken no position as to these individuals.

YIA Program Manager (Leadership Projects) Sasha Dobos-Czarnocha. As noted above, the Employer contends that YIA Program Manager Dobos-Czarnocha must be excluded from the unit as a statutory supervisor. The Union takes the opposite view.

The record reflects that YIA Program Manager Dobos-Czarnocha supervises the Crew 41 members, part of a group of junior corpsmembers, whom the parties stipulated are excluded from the unit. However, as noted above, the parties do not agree on the basis for excluding Crew 41 members from the unit; the Employer contending that the Crew 41 members lack a community of interest with other unit employees and the Union asserting that the Crew 41 members are not employees within the meaning of the Act. The basis for excluding the Crew 41 employees from the unit is crucial for the determination of whether Dobos-Czarnocha is a statutory supervisor--for if she only supervises individuals who are not employees under the Act, she cannot be deemed a statutory supervisor. As discussed below, I find that the Crew 41 members are employees under the Act, and that Dobos-Czarnocha is a statutory supervisor.

Facts Related to Crew 41 Members. The record reflects that Crew 41 is a group of ten to twelve junior corpsmembers who participate in the Employer's Urban Leadership Project. They are all high school students and work at the ECO Center. Their job is primarily to organize and set up service projects and to assist in preparing the homework lab for the junior corpsmembers.[15] The Crew 41 members must be between 16 and 18 years of age. They must obtain a work permit to be in the program and must be enrolled in the 11th or 12th grade in high school. They are paid on an hourly basis; fill out timesheets; and receive at least the minimum wage of $6.75 an hour, despite the Employer's exemption from this requirement under a San Francisco City Ordinance. Their wages are subject to tax withholding. They work part-time and are not given sick leave and health and welfare benefits or vacation benefits by the Employer. They are covered by the Employer's Workers Compensation policy

[15] The homework tutorial for the junior corpsmembers is handled by the AmeriCorp member participants

and are required to complete both an I-9 and a W-4 form for tax purposes. Crew 41 members are required to follow the Employer's personnel policies and can be disciplined and terminated for work misconduct. If they leave their employment, they can reapply for a Crew 41 position but their rehire is not guaranteed. Crew 41 members must end their participation in Crew 41 when they turn 18 years of age. They have no automatic right to transfer to adult corpsmember status when they reach age 18. Deputy Director Lampkin testified that in the past three years, no Crew 41 member has applied for adult corpsmember status. The record reflects that the typical length of employment for most of the Crew 41 members is only for a one-year period. There is no evidence to show that Crew 41 workers are in need of rehabilitation in order to work and there is no indication that they were referred to the Employer by a state agency for rehabilitative purposes.

Whether Crew 41 Members Are Statutory Employees. Section 2(3) of the Act provides that:

> The term "employee" shall include any employee . . . unless the Act [this subchapter] explicitly states otherwise . . . but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individual employed as an independent contractor . . .

In determining whether individuals such as the Crew 41 members are employees within the meaning of Section 2(3) of the Act, the Board examines the relationship between the employer and the employees at issue. When that relationship is guided to a great extent by business considerations and may be characterized as a typically industrial relationship, statutory employee status is found. See *Huckleberry Youth Programs*, 326 NLRB 1272, 1273 (1998); *Davis Memorial Goodwill Industries*, 318 NLRB 1044 (1995); *Arkansas Lighthouse for the Blind*, 284 NLRB 1214 (1987);

Cincinnati Association for the Blind, Inc. 235 NLRB 1448 (1978). When the relationship is primarily rehabilitative and working conditions are not typical of private sector working conditions, the Board does not find statutory employee status. See *Goodwill Industries of Tidewater, Inc.*, 304 NLRB 767 (1991). However, the mere fact that the persons engaged in a program must be students is insufficient, standing alone, to require a finding that they are not employees under the Act. See *Boston Medical Center Corporation*, 330 NLRB 152 (1999).

I find that the Crew 41 members are employees within the meaning of the Act based on the following facts: They perform work for the Employer, fill out timesheets and are paid the minimum wage by the Employer. They are subject to tax withholding and are covered by the Employer's workers compensation policy. They are expected to abide by the Employer's rules and can be disciplined and terminated if they do not. There is no evidence that Crew 41 members are referred to the Employer by a state agency for rehabilitative purposes. Nor is there any evidence to show that the Crew 41 members are in need of rehabilitation in order to work for the Employer or that they require a sheltered work environment. See *Huckleberry Youth Programs*; *Goodwill Industries of Tidewater*; and *Goodwill Industries of Denver*. The mere fact that the Employer provides more training and oversight to the Crew 41 members than it does for more experienced employees, does not, standing alone, warrant a finding that the Crew 41 members are not employees under the Act. Thus, as the Board observed in *Huckleberry*, 326 NLRB at 1274, they are "employees who are young and in their first employment situation, and thus likely in need of employment training." The fact that Crew 41 members must be students pursuing an educational program does not warrant a finding that they are not statutory employees, despite the fact that they may work only part-time or that the Employer adjusts

their work schedules so that they have a day each week to attend classes. *Boston Medical Center Corporation*, 330 NLRB at 160. Nor do the age range and employment duration limitations on Crew 41 members warrant a finding that they are not employees under the Act. *Huckleberry Youth Programs*, 326 NLRB at 1272. With regard to duration, the record shows that although employment contracts for the Crew 41 workers are generally for a one-year period, they can be extended for a second year. Although most of the Crew 41 members work only for a one-year period, there is no evidence that this is because the Employer refuses to renew contracts if Crew 41 members seek to continue working for the Employer for a second year. In any event, the temporary status of the Crew 41 members is a factor in determining their unit placement and eligibility, and not in determining their status as employees. *Boston Medical Center Corporation*, 330 NLRB at 166. Finally, while the Employer provides the Crew 41 members with counseling services, there is no evidence that they are required to use such services in order to work for the Employer.

In these circumstances, I find that the Crew 41 members are employees within the meaning of Section 2(3) of the Act. However, they are excluded from the unit based on the parties' stipulation to their exclusion. I find that this stipulation is supported by the record, which shows a lack of a substantial community of interest between the Crew 41 and unit employees. Specifically, I find that the differences in skills; lack of evidence of interchange; different work contracts of limited duration; different wage rates and methods of payment; and the requirement that Crew 41 employees be engaged in an educational program and be within a certain age range, all support the parties' stipulation to exclude them from the unit.

Whether YIA Program Manager Sasha Dobos-Czarnocha Is a Statutory Supervisor.

The record includes a job announcement for Dobos-Czarnocha's position titled Program Manager, Leadership Projects. This job announcement reflects that her position is a full-time, exempt position paid a starting salary of between $30,0000 and $34,000 a year with benefits. The job requires a Class B driver's license and two years of professional experience in youth development. According to the job announcement, Dobos-Czarnocha reports directly to the Associate Director for Youth Programs Michael Jones, and is primarily responsible for the management of the high school leadership component of the YIA program. Specifically, according to the job announcement, she provides support and guidance to the AmeriCorp members as they implement the program for the junior corpsmembers attending the program and she develops and implements program policies and administers relationships with external entities to further the program's objectives. Dobos-Czarnocha generates fiscal reports and develops and monitors program budgets under the guidelines of Associate Director Jones. She also participates in the annual budgetary process by providing pertinent budget data and information for the program. In addition, as described in the job announcement, Dobos-Czarnocha provides orientation and supervision for corpsmembers (Crew 41 members) and provides them with ongoing assessments and evaluations.

Deputy Director Lampkin testified that Dobos-Czarnocha spends about 75 to 85 percent of her time supervising the Crew 41 members who assist the AmeriCorp members in providing a tutorial service to younger junior corpsmembers. As indicated above, part of Dobos-Czarnocha's job is to provide assistance and support to the AmeriCorp members who participate in the program. The AmeriCorp members oversee the Crew 41 members who assist them in providing the tutorial program.

Lampkin testified generally that Dobos-Czarnocha possesses the authority to hire and fire the Crew 41 members and had done so during the year preceding the hearing. As discussed above, the Crew 41 members that Dobos-Czarnocha oversees are employees within the meaning of the Act although not included in the unit on community of interest grounds. With regard to Dobos-Czarnocha's authority to hire these Crew 41 members, the record contains documents titled "Corpsmembers Personnel Action Forms," for new hires of Crew 41 members in calendar years 2001 and 2002, that are signed by Dobos-Czarnocha and her predecessor on the signature line for supervisor/manager. These documents are also signed by Deputy Director Lampkin and by Associate Director of Outreach and Development Michael Mateo, both of whom are stipulated to be statutory supervisors. Mateo's signature appears on the line designated for "Site HR."

With regard to Dobos-Czarnocha's authority to terminate and discipline employees, the record contains no evidence as to specific instances where Dobos-Czarnocha has terminated Crew 41 members. Lampkin testified generally that with regard to disciplinary actions by supervisors, she makes an immediate investigation of such actions in order to ensure that the misconduct actually took place and that the discipline is being handled consistent with the Employer's policies and procedures.

Lampkin further testified that Dobos-Czarnocha also has the authority to authorize time off for the Crew 41 members and that Dobos-Czarnocha fills out daily roll call sheets and signs timesheets. Without her signature verifying the timesheets, the Crew 41 members cannot be paid.

Analysis: Section 2(11) of the Act defines a supervisor as:

> [A]ny individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in

> connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

The authority listed in Section 2(11) is in the disjunctive and the possession of any one of the authorities set forth therein is sufficient to support a finding that an individual is a statutory supervisor. See *Providence Hospital*, 320 NLRB 717 (1996) enf'd 121 F.3d 548 (9th Cir. 1997); *International Center for Integrative Studies*, 297 NLRB 601 (1990); *Juniper Industries, Inc*., 311 NLRB 109, 110 (1993). Further, the authority must be exercised with independent judgment on behalf of the employer and not in a routine, clerical or perfunctory manner. *Clark Machine Corp*., 308 NLRB 555 (1992); *Bowne of Houston, Inc*., 280 NLRB 1222, 1223 (1986). An individual who exercises some "supervisory authority" only in a routine, clerical, perfunctory, or sporadic manner will not be found to be a supervisor. *Id*. Further, in determining whether an individual is a supervisor within the meaning of the Act, the Board has a duty to employees not to construe supervisory status too broadly because the employee who is found to be a supervisor is denied the employee rights that are protected under the Act. *Hydro Conduit Corp*., 254 NLRB 433, 347 (1981). Secondary indicia alone, such as job titles, differences in pay and attendance at meetings, are insufficient to establish that an employee is a statutory supervisor. *Laborers Local 341 v. NLRB*, supra; *Arizona Public Service Co. v. NLRB*, 453 F.2d 228, 231 fn. 6 (9th Cir. 1971); *Waterbed World*, 286 NLRB 425, 426 (1987).

A the evidence establishes that Dobos-Czarnocha hires and authorizes time off for Crew 41 members, whom I have found to be statutory employees, although not part of the unit, I find that she is a supervisor within the meaning of the Act. Accordingly, Dobos-Czarnocha will be excluded from the unit.

Project Coordinator Eugenia Sarretea; Recycling Services Program Manager Valerie Carey; CST Field Education Supervisors Therman McGowan, Richard Carter, Richard Daigle, Lawrence Hamilton and Cari Mitchell; and CST Program Managers Carter Church, Maurice Saulsbury and Matthew Tago. As noted above, the Employer contends that these individuals, who supervise adult corps members, should be excluded from the unit as statutory supervisors. As also noted above, while the parties agree that adult corps members should be excluded from the unit, they do not agree on the basis for their exclusion; the Employer asserting that the adult corpsmembers should be excluded from the unit on the basis that they do not share a community of interest with stipulated unit employees and the Union contending that they are not employees under the Act. As with the Crew 41 members discussed above, the basis for excluding the adult corpsmembers from the unit is critical to determining whether Sarretea, Carey, McGowan, Carter, Daigle, Hamilton, Mitchell, Church, Saulsbury and Tago are statutory supervisors--for if they only supervise individuals who are not employees under the Act, they cannot be statutory supervisors. As discussed below, while I find that the adult corpsmembers are employees under the Act, I find that they are properly excluded from the unit under the community of interest test.

Whether Adult Corpsmembers Are Statutory Employees. About 70 to 100 adult corpsmembers between the ages of 18 and 26 work for the Employer. The record reflects that the adult corpsmembers work on a variety of community service projects, including landscaping and restoration work; recycling; instructing students about recycling; installing play structures in the community; and weeding public areas. They report to the Community Service and Training Center located in the Presidio in San Francisco. Adult corpsmembers work Monday through Thursday,

beginning at 7:30 a.m. They work on crews of between 10 and 12 adult corpsmembers performing service projects, as described above. Each crew is headed by a field supervisor. On Fridays, the adult corpsmembers must attend academic classes beginning at 8:30 a.m. They are paid hourly wages and their wage rate ranges from $6.75 to $7.25 an hour. Crew leaders and educational assistants are paid $7.75 an hour; recruitment, project and orientation interns earn $8.25 an hour; and toolroom/operations and driver specialists earn $8.25 an hour. The adult corpsmembers are eligible to earn overtime. They must sign timesheets. The Employer deducts taxes and makes other applicable deductions from their wages. They must complete I-9 (immigration) forms. If they are employed more than a year and work a minimum of 1250 hours, they are eligible for benefits under the Family Medical Leave Act and California's Family Rights Act. They receive sick leave benefits and are covered by the Employer's workers compensation insurance policy. The Employer is obligated to follow wage and hour laws with respect to their meal and break times.

The term of service contract for adult corpsmembers is for a one-year period and can be extended for an additional year. Like the Crew 41 members, adult corpsmembers are required to abide by the Employer's personnel policies and they can be disciplined and terminated for failing to do so.

The record does not show that the adult corpsmembers are referred to the Employer by any state agency for rehabilitative purposes and there is no evidence that they require rehabilitation or a sheltered environment in order to work. While the Employer offers counseling services to the adult corpsmembers, the record contains no evidence that they are required to take advantage of these services in order to be employed by the Employer.

Analysis. As discussed above with respect to the Crew 41 members, the Board examines the relationship between the employer and the employees at issue in determining whether individuals such as the adult corpsmembers are employees within the meaning of Section 2(3) of the Act. When that relationship is guided to a great extent by business considerations and may be characterized as a typically industrial relationship, statutory employee status is found. See *Huckleberry Youth Programs*, 326 NLRB 1272, 1273 (1998); *Davis Memorial Goodwill Industries*, 318 NLRB 1044 (1995); *Arkansas Lighthouse for the Blind*, 284 NLRB 1214 (1987); *Cincinnati Association for the Blind, Inc. 235* NLRB 1448 (1978). When the relationship is primarily rehabilitative and working conditions are not typical of private sector working conditions, the Board does not find statutory employee status. See *Goodwill Industries of Tidewater, Inc.*, 304 NLRB 767 (1991). The mere fact that the persons engaged in a program must be students is insufficient, standing alone, to require a finding that they are not employees under the Act. See *Boston Medical Center Corporation*, 330 NLRB 152 (1999).

The Union contends that the adult corpsmembers should not be deemed employees under Section 2(3) of the Act for several reasons. It contends that because the Employer is a public benefit corporation created for public purposes and its purposes are basically work preparation, work readiness and vocational training, that the relationship of the adult corpsmembers to the Employer is not an employee/employer relationship under the Act but a rehabilitative one, citing *Abilities and Goodwill, Inc*., 226 NLRB 1224 (1976), and other related cases. The Union asserts, and the record shows, that the Employer has been granted an exemption from the minimum hourly wage under the Minimum Compensation Ordinance of the City and County of San Francisco based on its certification that it is a

"bona fide training program," which "will allow that employee to advance into a permanent position." In order to qualify for this exemption, the training program must be subsidized by public funds, which are designated for training, workforce development, job readiness or similar purposes, and is limited in duration to the "occupation for which the individual is being trained." The Union also bases its position on its assertion that the adult corpsmembers may only participate in the program for a limited period of time, which is typically a year and not more than 24 months, and there are also age restrictions in the program—adult corpsmembers must be between 18 and 26 and in middle or high school. Third, the adult corpsmembers, are obligated to participate in an educational component of the program and the Employer schedules their work Monday through Thursday, so that they can attend school on Friday. If they do not attend school, the Employer will suspend them from the program. Fourth, the Employer's employee manual defines "Corpsmember and Junior Corpsmember" participants as "temporary, non-exempt employees [who] are considered to be trainees within the length of their employment." These employees are "not entitled to benefits under these policies with the exception of worker's compensation and other statutory requirements. The adult corpsmembers are not entitled to unemployment insurance benefits. In this regard, I take administrative notice of Section 634.5(e) of the California Unemployment Insurance Code, which states in relevant part that "employment" for purposes of one's entitlement to receive unemployment compensation does not include work as part of an "unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency or any agency of a state or political subdivision thereof; by an individual receiving such work relief or work training." The Union asserts that the variety of work that the Employer does—landscaping, installation of bike racks, construction of playground structures—is done solely for the

purpose of providing a context in which training can occur; that is, that the Employer is operating a job-training program and is not, in fact, a landscape architect, or contractor for regular business purposes. The Union also relies on the CST program description, which states that the Employer is a "paid job training and academic enrichment program serving young adults ages 18 to 26.

I find that the adult corpsmembers are employees under the Act for the following reasons: they are paid a wage of $6.75 to $7.75 an hour; they work 32 hours a week; they are eligible for overtime; they earn sick leave; they are covered by the Employer's worker's compensation policy; they must show eligibility to be employed in the United States; and must abide by the Employer's Employee Handbook as a condition of their employment. They must sign timesheets and comply with California law as to meal and break periods. They are eligible for Employer benefits under the Family Medical Leave Act. They are subject to discipline and termination by the Employer as well as being subject to other Employer work rules. They perform work for the Employer that includes building play structures and performing landscaping work under the direction of the Employer's Field Education Supervisors in the Community Service and Training Center (CST).[16]

The requirement that adult corpsmembers participate in an educational program and the time limitation on the duration of their contracts does not remove them from the status of statutory employees. Nor is there any evidence that they require rehabilitation or a sheltered work environment. While the Employer provides adult corpsmembers with counseling services, there is no evidence that they are required to take advantage of such services in order to be employed by the Employer.

16 Whether field education supervisors are statutory supervisors is at issue herein.

With regard to the Union's argument that the Employer is only operating a service program in order to develop the skills of the adult corpsmembers, the Employer's purposes, as set forth above, show that it is not only an agency providing work training, education and career development for individuals, but also providing direct services to the community such as assistance with conservation, rehabilitation and land improvement in the San Francisco area and assistance with disaster preparedness and emergency response programs. The Employer's purposes are broader than simply providing a training development program for youth. The adult corpsmembers are working at jobs that provide actual services to the community and they are compensated by the Employer with regular wages for their work.

Accordingly, I find that the adult corpsmembers are employees within the meaning of Section 2(3) of the Act.

Whether Adult Corpsmembers Share a Community of Interest With Unit Employees. The Employer contends that the 70 to 100 adult corpsmembers should be excluded from the stipulated unit of approximately 21 employees on community of interest grounds and the Union takes the position that the adult corpsmembers are not statutory employees, but it is willing to proceed to an election in a unit that includes them. I find that the adult corpsmembers should be excluded from the unit based on their lack of a community of interest with stipulated unit employees for the following reasons:

First, the approximately twenty-one employees who are stipulated to be included in the unit are permanent employees of the Employer with no limitations on their employment tenure. Some have been employed for almost twenty years. The adult corpsmembers, on the other hand, are limited-term employees who work for the Employer for at most one or two years.

Second, the adult corpsmembers fill out different job applications and are subject to certain rules and regulations that are different than those applied to the employees stipulated to be included in the unit.

Third, the employees stipulated to be included in the unit perform oversight, administrative and program duties for the Employer, while the adult corpsmembers perform manual labor that primarily involves construction and landscaping projects, such as installing bike racks, building play structures and clearing weeds.

Fourth, the employees stipulated to be included in the unit have separate supervision from almost all of the adult corpsmembers. The adult corpsmembers are supervised/managed by Associate Director of Programs Peter Chandonnet and only one employee stipulated to be included in the unit, Field Program Assistant Evan Goldman, is supervised by Chandonnet.

Fifth, the employees stipulated to be included in the unit earn a minimum of $11 an hour and many of them are salaried and earn $30,000 or more a year. The adult corpsmembers are paid between $6.75 and $7.75 an hour. Because the adult corpsmembers work only part-time, they are not eligible for the same Employer health and welfare benefits as are the staff employees stipulated to be included in the unit.

Sixth, there is no showing of temporary or permanent interchange between adult corpsmembers and the employees in the stipulated group. Nor is there any showing that adult corpsmembers are promoted to regular staff employee positions.

Lastly, there is no showing of any collective bargaining history.

Based on the foregoing factors, I find that the record evidence does not establish that the adult corpsmembers share a community of interest with the stipulated unit members sufficient to warrant their inclusion in the unit. Accordingly, I find that the adult corpsmembers should be excluded from the unit.

Project Coordinator Eugenia Sarretea. The Employer contends that Project Coordinator Eugenia Sarretea must be excluded as a managerial employee and/or a statutory supervisor. The Union takes the opposite position.

The record reflects that Sarretea is responsible for managing the completion of large play structure projects constructed by the Employer. She arranges for the purchase of materials used in such construction and has the authority to extend the Employer's credit and make purchases for the Employer. In the twelve-month period preceding the hearing, Sarretea independently purchased approximately $100,000 worth of materials used for such projects.

There is at least one adult corpsmember who reports to Sarretea. Employer Deputy Director Tanya Lampkin testified generally that Sarretea has the authority to grant this adult corpsmember time off from work and to recommend wage increases, promotions, salary changes and transfers with respect to this individual. According to Lampkin, Sarretea also schedules work for this adult corpsmember. Lampkin further testified that Sarretea had disciplined an adult corpsmember named Jose. However, the record does not disclose further evidence regarding this disciplinary incident.

Whether Sarretea is a Managerial Employee. Managerial employees are defined as those employees who "formulate and effectuate management policies by expressing and making

operative the decisions of their employer." *NLRB v. Bell Aerospace Co.*, 416 U.S. 267, 288 (1974), quoting *Palace Laundry Dry Cleaning*, 75 NLRB 320, 323 n. 4 (1947). "Managerial employees must exercise discretion within or even independent of established employer policy and must be aligned with management." *NLRB v. Yeshiva University*, 444 U.S. 672 (1980). As the Supreme Court stated in *Yeshiva*, supra, "Normally an employee may be excluded as managerial only if he represents management interests by taking or recommending discretionary actions that effectively control or implement employer policy." *Id*. These employees are "much higher in the managerial structure" than those explicitly mentioned by Congress which "regarded [them] as so clearly outside the Act that no specific exclusionary provision was found necessary." Managerial employees must exercise discretion within, or even independently of, established employer policy and must be aligned with management. Although the Board has established no firm criteria for determining when an employee is so aligned, normally an employee may be excluded as managerial only if he represents management interests by taking or recommending discretionary actions that effectively control or implement employer policy. The burden is on the party arguing for the exclusion of individuals from a unit on the basis of managerial status to prove that such individuals are managerial employees.

As the evidence establishes that Sarretea has the independent authority to extend the Employer's credit and that she has exercised this authority by purchasing $100,000 of materials for Employer construction projects, I find that Sarretea a managerial employee within the meaning of the Act and she will be excluded from the unit on that basis. *NLRB v. Yeshiva University*, 444 U.S. 672, 684 fn. 16 (1980); *NLRB v. Bell Aerospace Co.*, 416 U.S. at 288 fn. 14; *Concepts & Designs, Inc.*,

318 NLRB 948, 957 (1995) enf'd 101 F.3d 1243 (8th Cir. 1996); *Swift & Co*., 115 NLRB 752, 753 (1956); *American Locomotive Co*., 92 NLRB 115, 116-117 (1950).

Whether Sarretea is a Statutory Supervisor. As noted above, Section 2(11) of the Act defines a supervisor as an individual having the authority, in the interest of the employer, to, to hire, transfer, suspend, lay off, recall promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. The evidence establishes that in addition to her managerial duties and responsibilities, Sarretea also schedules the work of the adult corpsmember reporting to her and has the authority to grant time off from work for this individual. She also has the authority to recommend wage increases, promotions, salary changes and transfers with respect to this individual. In these circumstances, I find that Sarretea is also a supervisor within the meaning of the Act and she will be excluded from the unit on this basis as well.

Program Manager (Recycling Services) Valerie Carey. As noted above, the Employer asserts that Recycling Services Program Manager Valerie Carey should be excluded from the unit on the basis that she is a statutory supervisor and the Union takes the contrary view.

Carey works in the Employer's recycling program, a part of the ECO Center program. Her immediate supervisor is Associate Director of Environmental Programs Elizabeth King. The record reflects that Carey possesses the authority to "disenroll" adult corpsmembers from the recycling program. She also directly oversees Recycling Outreach Supervisor Alain Claudel and Recycling Operations Supervisor Corey Neary, both of whom are stipulated to be included in the unit.

Carey plays a role in the Employer's hiring process for adult corpsmembers and persons hired in the position of recycling outreach supervisor. Lampkin testified that Carey reviews the resumes of applicants and decides who should be interviewed; conducts interviews of candidates; and makes recommendation for hire. In this regard, the record reflects that on one occasion, Carey did not recommend the hire of a person named Bishop for the position of recycling outreach supervisor and the Employer did not hire Bishop for the position.

Carey is also involved in recommending salary increases for the recycling operation supervisors. In this regard, the record documents her involvement in a situation involving a pay increase recommendation for Recycling Operations Supervisor Jeremy Kaller. Specifically, the record contains a memo dated August 9, 2002, from Deputy Director Lampkin to ECO Center Director Jennifer Blenkle and Carey, stating that Lampkin had reviewed the "request" by Carey and the "recommendation" by Blenkle for a salary increase for Recycling Operations Supervisor Kaller. The record reflects that Lampkin reviewed and changed the dollar amount of the increase requested/recommended by Carey and Blenkle.

With regard to whether Carey possesses the authority to discipline employees, the record includes a memo dated February 22, 2002, from Carey to Recycling Operation Supervisor Jeremy Kaller concerning Kaller's use of inappropriate comments in Kaller's written evaluation of a corpsmember on his crew. The record shows that this memo was generated as a result of Deputy Director Lampkin's audit of the Employer's personnel files. While conducting this audit, Lampkin noticed the comments in the evaluation by Kaller and brought the matter to Carey's attention. Carey then issued a written a memo to Carey admonishing him about the use of inappropriate language.

The record also contains a memorandum dated April 12, 2002, from Carey and Recycling Outreach Supervisor Alyssa Johl to Recycling Outreach Corpsmember Darren Simpson, suspending him for three days and deducting $50 from his stipend for those days. Simpson is not clearly identified in the record as an adult corpsmember or an AmeriCorp member, but the reference to the deduction from his stipend for the three-day suspension period suggests that he is an AmeriCorp member. The record does not indicate how the decision to suspend Simpson was made and whether Carey made any effective recommendation regarding this decision. As noted above, Lampkin testified generally that when a supervisor recommends that discipline be imposed on an individual, Lampkin does her own investigation to ensure that the misconduct actually occurred and that the discipline imposed is consistent with the Employer's policies and procedures.

I find that the record evidence is insufficient to determine Carey's status as a statutory supervisor. Accordingly, Carey will be permitted to vote subject to challenge.

CST Program Managers Carter Church, Maurice Saulsbury, and Matthew Tago. The Employer contends that CST Program Managers Church, Saulsbury and Tago are statutory supervisors based on their supervision of the adult corpsmembers in the CST program and their supervision over three CST field education supervisors, whom the Employer also contends are statutory supervisors based on their supervision of the adult corpsmembers. In addition, one of the CST Program Managers, Church, was also overseeing Project Coordinator Eugenia Sarretea, whom I have found to be a managerial employee based on her authority to expend substantial amounts of Employer funds to purchase materials for building projects.

The record reflects that the responsibilities and level of authority for Church, Saulsbury and Tago are basically the same. Both Saulsbury and Tago each oversee two field education supervisors and indirectly oversee the 10 to 12 adult corpsmembers on the crew reporting to each CST field education supervisor. At the time of the hearing, CST Program Manager Church was overseeing CST Field Education Supervisor Therman McGowan and Project Coordinator Eugenia Sarretea and was also directly overseeing 10 to 12 adult corpsmembers because of a vacant CST field education supervisor position that had been left vacant by the termination of Field Education Supervisor Lawrence Hamilton.

The record reflects that the CST program managers are involved in the hiring, evaluating and disciplining of CST field education supervisors and that they are responsible for overseeing and approving actions and evaluations prepared by CST field education supervisors for adult corpsmembers on their crews.

Hiring Authority. The record shows that CST Associate Director of Programs Peter Chandonnet, a stipulated supervisor, and CST Program Manager Saulsbury, both interviewed and recommended the hire of CST Field Education Supervisor Sandra Marilyn. Associate Director of Personnel Heather Bratt testified that the decision to hire Marilyn was made jointly by Chandonnet and Saulsbury.

CST Program Manager Church was involved in the hiring process to replace a Field Education Supervisor Lawrence Hamilton, who was terminated. Church and Associate Director of Programs Chandonnet conducted the first round of interviews in this process. CST Program Director Gomes, also a stipulated supervisor, conducted a second round of interviews. Gomes testified that both

Chandonnet and Church had recommended that Gomes interview both of the applicants that they had interviewed. According to Gomes, she interviewed only one of the two applicants because the other was not eligible under the Employer's driver's policy.

Authority to Evaluate and Recommend Pay Increases. Church testified that he had evaluated Program Coordinator Eugenia Sarretea twice. According to Church, on both occasions, Program Director Janet Gomes was acting as his supervisor and she repeatedly revised his evaluation and ultimately lowered approximately eight of the scores on the evaluation for Sarretea that Church had prepared. In this regard, Gomes testified that she did not direct Church as to what ratings to give Sarretea but merely revised the evaluation so that it would be thorough and internally consistent. Gomes testified for the past couple of years, she has had all of the staff submit draft appraisals to her that she reviews and revises. Gomes must approve appraisals before they are finalized and given to the employee.

The record also contains an annual evaluation prepared by Saulsbury for CST Field Education Supervisor Cari Mitchell for the period December 1, 2000 to December 1, 2001. The evaluation includes ratings in numerous areas and written comments on strengths and areas of weakness as well as future developmental goals. It contains no recommendation for pay increases or other awards. It is signed by Saulsbury as the supervisor and Janet Gomes as the "evaluator's supervisor signature." The record does not disclose what changes, if any, Gomes made in this evaluation.

As indicated above, because of the vacancy in a CST field supervisor position, Church had been directly overseeing 10 to 12 adult corpsmembers and had prepared evaluations for certain of these adult corpsmembers. In general, such evaluations appraise the adult corpsmember's attendance,

attitude and behavior, using numerical scores. In this regard, the record contains the first page of one such evaluation, which is undated. The only notations by Church reflect the number of absences and times tardy of the adult corpsmember being evaluated. Church testified that he has never had a situation where an adult corpsmember had unsatisfactory ratings. According to Church, if this did happen, he understood that he had the authority to give the adult corpsmember a verbal and/or a written warning. However, Church testified that he could not suspend any adult corpsmember without Chandonnet's approval.

Disciplinary Authority. Program Manager Church testified that he has never been told that he has the authority to hire or fire employees and although the Employer has informed him that he has disciplinary authority, he has never actually disciplined anyone. CST Program Director Gomes testified that the CST program managers must also sign off on disciplinary actions recommended by the CST field education supervisors for the adult corpsmembers on their crews. Gomes testified that the CST program managers do not independently investigate the recommendations of the CST field education supervisors and the record does not otherwise disclose the nature of their involvement in this regard.

Gomes, a stipulated supervisor, testified that Program Manager Tago had issued a written warning to Field Education Supervisor Lawrence Hamilton and had ultimately terminated him for violating the Employer's policies and procedures, specifically for using the Employer's equipment (cell phone) in an unauthorized fashion. In this regard, the record contains a memo from Tago dated December 12, 2002, to Hamilton, with copies to Chandonnet, Gomes, Bratt and the file, stating that it had been brought to Tago's attention that Hamilton had again misused the Employer's cell phone; that

Tago had previously given him a written warning regarding his usage of the phone and informed him that if he misused it again, he would be terminated; and that now he was left with no choice but to terminate Hamilton.

The record shows that the situation with Hamilton began in the summer of 2002, when Associate Director of Operations Ron Rinzler notified Gomes that Hamilton had been misusing Employer equipment. Gomes thereupon recommended to Associate Director of Programs Chandonnet and to Tago that Hamilton be required to pay back the money he owed and that Chandonnet and Tago review the personnel policies and procedures and follow through with any necessary disciplinary action. According to Gomes, Chandonnet and Tago thereupon drafted a memo requiring Hamilton to re-pay the money he owed and warning him that if he violated the procedure again, he would be terminated. Gomes testified that she reviewed this memo and approved it, although she would have preferred to terminate Hamilton. She attributed the decision to issue Hamilton a written warning instead of imposing more severe discipline on him to Tago. She testified that Chandonnet told her that his preference would also have been to terminate Hamilton, but Tago had decided to give Hamilton another chance. Gomes testified that although she and Chandonnet disagreed with Tago's course of action, they approved his decision to issue only a written warning to Hamilton. Neither Chandonnet nor Tago testified at the hearing. Gomes testified that when Hamilton again misused Employer equipment a few months later, Tago fired him.

As indicated above, both Lampkin and Gomes testified that they reviewed the disciplinary actions of their staff in order to ensure proper documentation and consistency with Employer policies and procedures and that they otherwise did not overturn such actions.

As indicated above, Church testified that if an adult corpsmember had unsatisfactory ratings on his or her evaluation, Church had the authority to issue oral or written warnings to the individual but was required to obtain Chandonnet's approval in order to suspend or terminate any adult corpsmember.

Authority to Grant Time Off. The CST program managers are authorized to recommend time off for both the adult corpsmembers and the CST field education supervisors. Chandonnet must ultimately approve any request for time off. Church testified that he has recommended time off for both field supervisors and adult corpsmembers in the program. According to Church, as a general practice the Employer grants requests for time off to the adult corpsmembers. In this regard, Church further testified that he has no authority to grant time off with regard to the educational aspects of the adult corpsmember's program. Church testified that on approximately 15 occasions in the two-and-a-half (2½) years he had been a CST program manager, he had made recommendations that time off be granted. He could recall no instance where the Employer failed to follow his recommendation in this regard. CST program managers must also sign the CST field education supervisors' time sheets to verify their work hours.

In view of the foregoing, I find that CST Program Managers Carter Church, Maurice Saulsbury, and Matthew Tago are statutory supervisors based on their authority to effectively recommend disciplinary actions and to grant time off. In this regard, I rely specifically on Gomes' testimony that she approved the recommended decision by Tago to issue only a written warning to Hamilton, despite the preference of herself and Chandonnet to terminate Hamilton for misusing Employer equipment. I also rely on Church's acknowledgement that the Employer had informed him

that he had the authority to discipline employees and that he understood that he could issue verbal and written warnings to them but must seek Chandonnet's approval when he wanted to suspend or terminate an employee.

In addition, the testimony of Church that his recommendations for time off have always been approved supports the conclusion that the CST program managers have authority to effectively recommend time off for employees.

In view of the foregoing, I find that CST Program Managers Carter Church, Maurice Saulsbury, and Matthew Tago are each a statutory supervisor and they will be excluded from the unit.

CST Field Education Supervisors. The Employer contends that CST Field Education Supervisors Therman McGowan, Richard Carter, Richard Daigle, and Cari Mitchell should be excluded from the unit on the basis that they are statutory supervisors. The Union takes the contrary view.

Authority to Evaluate and Recommend Pay Increases. Deputy Director Lampkin testified that the CST field education supervisors regularly conduct performance evaluations and recommend pay increases for adult corpsmembers. She testified that she was aware of no situation when their recommendation had not been followed. Associate Director of Outreach and Recruitment Kimberlie Warren similarly testified that she was aware of no instance when a wage increase recommendation by a CST field education supervisor had not been followed. Warren testified that she had been a CST field education supervisor for approximately two years from 1997-1998, and had recommended wage increases for adult corpsmembers on at least 20 occasions and had never had an instance where one of her recommendations had been overturned. She testified that as the associate director of outreach and recruitment, the only type of independent investigation she conducts involving

recommended wage increases is to ensure compliance with the Employer's policies and procedures. She testified that she had seen wage increases recommended by the CST field education supervisors within the six months preceding the hearing and was not aware of any that had been overturned.

Disciplinary Authority. CST Program Director Gomes testified that there had been several hundred disciplinary actions recommended by the CST field education supervisors and that only one or two had been overturned. As indicated above, the testimony of Lampkin, Gomes and Warren is to the effect that they review all disciplinary actions and evaluations to ensure that they are supported by proper documentation and are consistent with Employer policies and procedures. Gomes testified that she had never overturned a disciplinary action unless it lacked support or was inconsistent with Employer policies.

The record shows that one of the disciplinary actions recommended by a CST field education supervisor that had been overturned involved the termination of Adult Corpsmember Kangason Shivers. CST Field Education Supervisor Richard Carter had recommended Shivers' termination and CST Program Manager Church and Associate Director of Programs Peter Chandonnet had approved Carter's recommendation. However, Program Director Gomes reviewed the termination action and reversed it. Gomes testified that she did so because she determined that proper procedures had not been followed in the termination. Specifically, Gomes testified that the termination was not sufficiently supported and that Shivers had not received his final paycheck at the time of termination as required by State law. Gomes testified that she had also reversed a termination action by another manager, the associate director of education, who is stipulated to be a statutory supervisor and/or

managerial employee, because the person did not receive their final paycheck when they were terminated.

As noted above, I have found that the adult corpsmembers are employees within the meaning of the Act although they are excluded from the unit based on community of interest considerations. The evidence establishes that the CST field education supervisors' job is to oversee these adult corpsmembers. It further establishes that the CST field education supervisors possess the authority to evaluate, discipline, and to effectively recommend wage increases and discipline of adult corpsmembers. I find that the CST Field Education Supervisors Therman McGowan, Richard Carter, Richard Daigle, and Cari Mitchell are each a statutory supervisor within the meaning of the Act. Accordingly, they are excluded from the unit.

Whether Personnel Assistant Robin Graybill, Administrative Assistant Delia Barnes, And CST Director Assistant Natasha Shterngerts Are Confidential Employees. The Employer contends that Personnel Assistant Graybill, Administrative Assistant Barnes and CST Director Assistant Shterngerts are confidential employees who must be excluded from the unit. The Union takes the opposite position.

Personnel Assistant Robin Graybill. Robin Graybill is an assistant to Heather Bratt, the Employer's associate director of personnel, who is stipulated to be a manager and/or statutory supervisor. Bratt is responsible for personnel department operations, including the recruitment and hiring of all staff positions; the administration of human resources functions; and the administration of employee benefits and benefits counseling for all employees. Graybill provides administrative support to Bratt and to the personnel department. Her duties include maintaining all personnel records and files;

handling all audits; and handling all correspondence relating to personnel matters. Such records and correspondence include those dealing with the hiring, disciplining and termination of employees. Access to the Employer's personnel records is limited to Graybill, Bratt, Deputy Director Lampkin, Payroll Manager Kristi Epps and the two Associate Directors of Outreach and Recruitment, Michelle Mateo and Kimberlie Warren. Graybill also has access to Bratt's e-mail.

Graybill maintains and tracks all data in the personnel database to ensure the Employer's compliance with its pre-employment process. This includes the submission of I-9 forms. She tracks job applicants and disseminates their information to the appropriate decision-makers. She creates spreadsheets relative to pre-employment matters. She notifies supervisors when evaluations are due for employees and corpsmembers in the program. In addition, she participates in meetings held to ensure that the Employer complies with its own policies and various laws regulating employment, including meetings where layoff decisions are made by the Employer.

Applicable Legal Principles. Under well-settled Board policy, an employee will be excluded from a bargaining unit as a confidential employee if he or she "assist[s] and acts in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations." *B.F. Goodrich Co.*, 115 NLRB 722, 724 (1956). See *NLRB v. Hendricks County Rural Electric Corp*., 454 U.S. 170 (1981). Under this definition, it is insufficient that an employee may on occasion have access to certain labor-related or personnel type information. As the Board stated in *Intermountain Rural Electric Association*, 277 NLRB 1, 3-4 (1985):

> What is contemplated instead is that a confidential employee is involved in a close working relationship with an individual who decides and effectuates management labor policy and is entrusted with decisions and information regarding this policy before it is made known to those affected by it.

In *Hendricks*, the Supreme Court also approved the Board's alternative test for confidential employee status that employees who have "regular" access to confidential information concerning anticipated changes that may result from collective-bargaining negotiations are deemed confidential employees. *Crest Mark Packing*, 283 NLRB 999 (1987).

Based on the evidence, which shows that Graybill is a personnel assistant to a manager involved in hiring and firing and other personnel decision-making for the Employer and has regular access to documents of a confidential nature involving labor matters, I find that Graybill is a confidential employee within the meaning of the Act. Accordingly, she will be excluded from the unit.

Administrative Assistant Delia Barnes. Delia Barnes reports directly to Associate Director of Operations Ron Rinzler and a substantial portion of her time is spent providing administrative support to the Employer's headquarters' staff of 15 to 20 persons. Her duties in this regard include answering the phones and distributing mail and facsimile transmissions. Barnes also spends about forty to fifty percent of her time serving as a personal assistant to Deputy Director Tanya Lampkin. Lampkin is stipulated to be a managerial employee and/or statutory supervisor. The record supports the conclusion that Lampkin has authority to hire, discipline and fire employees for the Employer as well as to decide whether employees are promoted or given wage increases. Barnes keeps Lampkin's calendar; has access to and reads Lampkin's e-mail; and handles Lampkin's correspondence, including correspondence dealing with personnel matters. In addition, Barnes types disciplinary letters for Lampkin. Barnes also attends and takes the minutes at management meetings where labor relations policies are discussed and formulated. Barnes has keys to the filing cabinet where personnel documents

are kept. The only other individuals who have keys to the personnel files are Bratt and Lampkin. Barnes performs similar duties for the Employer's director of finance that require another five to ten percent of her time and she provides support for the Employer's purchasing functions. No employees report to Barnes.

Based on the foregoing evidence, I find that Barnes is properly excluded as a confidential employee given her close working relationship to Lampkin, who decides and effectuates labor policy, and Barnes' regular role in taking the minutes at management meetings where labor relations policies are discussed and formulated. Accordingly, Barnes is excluded from the unit.

CST Director Assistant Natasha Shterngerts. Natasha Shterngerts is the personal assistant to the Director of CST Programs Janet Gomes, whom the parties have stipulated and I have found, is properly excluded from the unit as a managerial employee and/or statutory supervisor. The record supports the conclusion that Gomes plays a major role in decision-making regarding hiring, promoting, granting wage increases, disciplining and terminating employees. Shterngerts has access to Gomes' e-mail and regularly handles her correspondence, including correspondence involving funding entities and entities with which the Employer is under contract or seeking to be under contract. Shterngerts' job regularly involves handling correspondence dealing with employee discipline, promotions and wage increases. She attends monthly leadership team meetings for the CST Center that are attended by other managers. The subject matter of these meetings includes the implementation of the Employer's disciplinary program as well as the Employer's financial status and contracts. Gomes' job includes submitting drafts of proposals that come out of this meeting to the Employer's executive director. These proposals include whether positions should be negotiated, reduced or eliminated.

Based on Shterngerts' close working relationship with Gomes, who decides and effectuates labor policy; Shterngerts' role in attending management meetings where disciplinary and other personnel policy is formulated; and Shterngerts' role in assisting Gomes' in the preparation of drafts of personnel policy proposals to the Executive Director, I find that Shterngerts is a confidential employee. Accordingly, Shterngerts is properly excluded from the unit.

Education Facilitators Dave Munson and Karen Rakofsky. The parties stipulated, and I find, that Education Facilitators David Munson and Karen Rakofsky, who work in an Employer program, should be excluded from the unit because they are not employees of the Employer but rather are employees of the Muir Charter Schoo, a public school in Nevada County, California.[17]

Part-Time Teachers Erin Foley, Ann Arns. The record reflects that Erin Foley and Ann Arns are part-time teachers employed by the Muir Charter School and are not employees of the Employer. As such, they are properly excluded from the unit.

Part-Time Teachers Rene, Sonia and Paul (Last Names Not Identified). The record reflects that the Employer has three part-time teachers on its payroll, Rene, Sonia and Paul, who were in the process of being transferred to the payroll of the Muir Charter School, subject to administrative processing and security clearances by the Nevada County School District. Because these persons were

17 In this regard, the record contains a document titled "Memorandum of Understanding Between Nevada County Board of Education and The Muir Charter School and The California Conservation Corps," which states in relevant part "all employees of the Charter School shall only be considered employees of the Charter School. The Charter School shall have sole responsibility for employment, management, dismissal and discipline of its employees." The Memorandum further states that employees employed by the California Conservation Corps (CCC) shall not be employees of the County or the Charter School. Finally, the Memorandum states that: "The Charter School shall employ all teachers at CCC Local Corps, Job Build and Job Corps sites directly, and shall not contract for teachers with the CCC, Local Corps, Job Build or Job Corps unless otherwise agreed to in advance in writing between the Nevada County Superintendent of Schools, the Charter School and the participating member." The record does not indicate whether the Employer and the parties to this Memorandum

on the Employer's payroll as of the hearing in this case and the transfer to Muir Charter School had not been completed, I find that they should be voted subject to challenge.

Professional Employee Support Service Program Manager Kristi Makarawicz. As noted above, the parties stipulated, and I have found, that Support Service Program Manager Kristi Makarawicz should be included in the unit and that she is a professional employee who should be accorded a *Sonotone* election.

Conclusion. In summary, my findings are as follows: The Employer is not an exempt political entity and is subject to the Board's jurisdiction. The appropriate unit herein is comprised of the inclusions and exclusions I find herein, in addition to the stipulated inclusions and exclusions set forth above. Specifically, the unit will exclude the adult corpsmembers based on the parties' agreement to exclude them, which is supported by their lack of a substantial community of interest with unit employees. The junior corps. members, including the Crew 41 members, are excluded from the unit based on the parties' stipulation to exclude them, which is supported by their lack of a substantial community of interest with the unit employees. Project Coordinator Eugenia Sarretea is excluded as a managerial employee and a supervisor within the meaning of the Act; CST program managers Carter Church, Maurice Saulsbury and Matthew Tago and CST Field Education Supervisors Therman McGowan, Richard Carter, Cari Mitchell, Richard Daigle and YIA Program Manager Sasha Dobos-Czarnocha (Leadership Projects) are excluded as statutory supervisors. The unit will exclude Personnel Assistant Robin Graybill, Administrative Assistant Delia Barnes and CST Director Assistant Natasha Shterngerts as confidential employees. Part-time teachers Erin Foley and Ann Arns are excluded

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had an agreement regarding the employment of the persons at issue. This Memorandum is signed November 13,

because they are not employees of the Employer. As the evidence is insufficient to determine whether Program Manager (Recycling Services) Valerie Carey is a supervisor within the meaning of the Act, she will be permitted to vote subject to challenge. Similarly, because the evidence is inconclusive regarding whether part-time teachers Rene, Sonia and Paul (last names not identified) are employees of the Employer, they will be allowed to vote subject to challenge. Finally, the parties have stipulated, and I have found, that Support Service Program Manager Kristi Makarawicz is a professional employee who will be accorded a *Sonotone* election.

Sonotone Election. Pursuant to Section 11090.1 of the Board's Rules and Regulations, Support Service Program Manager Kristi Makarawicz will be accorded a *Sonotone* election procedure. She will be furnished two ballots: one on inclusion and the other on representation. The first ballot on inclusion will ask the following question: "Do you desire to be included with nonprofessional employees of the Employer in a single unit for the purposes of collective bargaining?" The choice of answers will be "Yes" or "No." The second ballot will ask the question: "Do you desire to be represented by Service Employees International Union, Local No. 790, AFL-CIO." Makarawicz's ballots will be addressed in the following manner: if the vote on the first ballot is for inclusion with nonprofessional employees of the Employer in a single unit, the second ballot is to be mixed unopened, with the regular ballots; if the vote is against inclusion with nonprofessional employees in a single unit, the second ballot shall be destroyed without being opened inasmuch as it is contrary to Board policy to certify a representative for bargaining purposes in a unit consisting of a single employee.

2002, and grants a charter to the Muir Charter School from May 8, 2002 for a term of five years.

If Makarawicz votes to be included in the unit with nonprofessional employees, her ballot will be counted with the votes of all other employees to decide whether to select Petitioner as the representative for the entire combined unit.

If Makarawicz votes for representation in the unit with non-professional employees, I find that the following unit (Unit A) constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

Unit A

All full-time and regular part-time employees employed by the San Francisco Conservation Corps at its San Francisco, California facilities in the following classifications: YIA program manager (conservation and recreation), YIA program manager (media projects), program manager (environmental) intern, recycling operations supervisor, recycling outreach supervisor, ISHIO operations site coordinator, member development coordinator, orientation coordinator, career development counselor, development associate (private), development associate (public), development associate (marketing and public relations), administrative assistant, skilled program assistant, CST administrative assistant, education program assistant, training and development assistant, network administrator, part-time registrar, billing/contracts manager and support service program manager; *excluding*, all other employees, AmeriCorp members, adult corpsmembers, junior corpsmembers, Crew 41 junior corpsmembers, executive director, deputy director, executive assistant, ECO Center director, program director, director of finance, director of development, associate director of personnel, associate director of programs, associate director of finance, associate director of operations, associate director of outreach and recruitment, associate director of youth programs, associate director of environmental programs, associate director of training and development, associate director of education, training and development, project coordinator, CST program managers, CST field education supervisors, personnel assistant, administrative assistant, CST director assistant, YIA program manager (leadership projects), accounts payable/payroll manager, all office clerical employees, confidential employees, guards and supervisors as defined in the Act.

If Makarawicz votes against inclusion in the unit with nonprofessional employees, I find that the following unit (Unit B) is an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

Unit B

> All full-time and regular part-time employees employed by the San Francisco Conservation Corps at its San Francisco, California facilities in the following classifications: YIA program manager (conservation and recreation), YIA program manager (media projects), program manager (environmental) intern, recycling operations supervisor, recycling outreach supervisor, ISHIO operations site coordinator, member development coordinator, orientation coordinator, career development counselor, development associate (private), development associate (public), development associate (marketing and public relations), administrative assistant, skilled program assistant, CST administrative assistant, education program assistant, training and development assistant, network administrator, part-time registrar, billing/contracts manager; *excluding*, all other employees, AmeriCorp members, adult corpsmembers, junior corpsmembers, Crew 41 junior corpsmembers, executive director, deputy director, executive assistant, ECO Center director, program director, director of finance, director of development, associate director of personnel, associate director of programs, associate director of finance, associate director of operations, associate director of outreach and recruitment, associate director of youth programs, associate director of environmental programs, associate director of training and development, associate director of education, training and development, project coordinator, CST program managers, CST field education supervisors, personnel assistant, administrative assistant, CST director assistant, YIA program manager (leadership projects), accounts payable/payroll manager, all office clerical employees, confidential employees, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid

off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike, which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **Service Employees International Union, Local 790, AFL-CIO.**

LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election directed herein should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.,* 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision 3 copies of election eligibility lists, containing the full names and addresses of all the eligible voters in each of the respective units, shall be filed by the Employer herein with the Regional Director of Region 20 who shall make the lists available to all parties in each of the elections directed herein. *North Macon Health*

Care Facility, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in the Region 20 Office, 901 Market Street, Suite 400, San Francisco, California 94103, on or before July 23, 2003. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

NOTICE OF POSTING OBLIGATION

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices of Election provided by the Board in areas conspicuous to potential voters for a minimum of three (3) full working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least five (5) full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so precludes employers from filing objections based on non-posting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request

for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by July 30, 2003.

DATED at San Francisco, California, this 16th day of July 2003.

Robert H. Miller, Regional Director
National Labor Relations Board
Region 20
901 Market Street, Suite 400
San Francisco, CA 94103-1735

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